

UNITED STATES COURT OF FEDERAL CLAIMS

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Quapaw Tribe of Oklahoma (O-Gah-Pah),))	
a federally recognized Indian nation,))	
))	
Plaintiff,))	No. 12-592L
))	
v.))	Hon. Thomas C. Wheeler
))	
The United States,))	
))	
Defendant.))	
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Thomas Charles Bear, et al.,))	
))	
Claimants,))	No. 13-51X
))	
v.))	Hon. Thomas C. Wheeler
))	
The United States,))	
))	
Defendant.))	
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PLAINTIFF TRIBE’S MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff, the Quapaw Tribe of Oklahoma (the O-Gah-Pah), moves this Court for entry of partial summary judgment in its favor on three claims. The United States breached its treaty obligation by failing since 1932 to make annual educational payments owed to the Tribe under the Treaty of 1833, and breached its fiduciary duties by failing to deposit funds into the Tribe’s trust accounts, making unauthorized withdrawals from those accounts all as detailed in the Government’s Tribal Trust Fund Reconciliation Project report prepared by Arthur Andersen and the Quapaw Analysis. Because there are no material facts in dispute regarding these claims, partial summary judgment is now

appropriate.

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Issues

1. The Treaty of 1833 requires the United States to pay the Quapaw Tribe \$1,000 per year for educational purposes. But the Government has not made these payments since 1932. Is the Government liable in damages for this failure to meet its treaty obligations?
2. The Government's congressionally mandated Tribal Trust Funds Reconciliation Project report¹ (Arthur Andersen report) identified \$31,680.80 in three unauthorized disbursements from the Tribe's trust accounts maintained by the United States. As trustee, is the Government liable in damages for making these unauthorized disbursements?
3. The Quapaw Analysis identified \$70,330.71 in transactions that should have been credited to the Tribe's trust accounts but that were not.² As trustee, is the Government liable in damages for failing to deposit these funds into the Tribe's accounts?

Summary of Argument

The Government has not and cannot dispute that the United States has failed to make the annual educational payments of \$1,000 owed to the Tribe under the 1833 treaty since at least 1932, allowed unauthorized withdrawals from the Tribe's trust account as identified in the Arthur Andersen Report, and failed to deposit other money to the Tribe's trust account as identified in the Quapaw Analysis. Therefore, the Quapaw Tribe is entitled to partial summary judgment in its favor for \$83,000 (plus investment income that would have been earned) as damages for the missing educational payments,³ \$31,680.80 (again, plus investment income that would have been earned) as damages for funds withdrawn from the Tribe's trust account without the Tribe's authorization, as

¹ Arthur Andersen LLP, Agreed Upon Procedures and Findings Report for the Quapaw Tribe (Dec. 31, 1995) (Ex. 2) [hereinafter Arthur Andersen Report].

² Quapaw Analysis at 101-02 (filed under seal at *Goodeagle v. United States*, No. 12-431L, Doc. 14).

³ \$1,000 per year since 1932 through 2015.

detailed in the congressionally mandated tribal trust reconciliation project (the Arthur Andersen Report), and \$70,330.71 (plus investment income that would have been earned) as damages for transactions the Government failed to credit to the Tribe's trust account, as stated in the Government-approved Quapaw Analysis.

Statement of Undisputed Facts

1. The 1833 Treaty between the Quapaw Tribe and the United States provides:

The United States also agree to appropriate one thousand dollars per year for education purposes to be expended under the direction of the President of the United States; . . . the above appropriation for education purposes to be continued only as long as the President of the United States deems necessary for the best interests of the Indians.⁴
2. From 1932 through 2015 the United States did not make this annual treaty payment of \$1,000,⁵ and the President has never deemed it unnecessary.⁶
3. The Government's Tribal Trust Funds Reconciliation Project (Arthur Andersen) Report found that the Government had made three unauthorized disbursements from the Quapaw Tribe's trust account totaling \$31,680.80.⁷
4. The Government has never paid the Tribe this \$31,680.80 in unauthorized disbursements from the Quapaw Tribe's trust account.
5. The Quapaw Analysis identified an additional \$70,330.71 in unreconciled transactions from Tribal trust accounts.⁸
6. The Government has never paid the Tribe the \$70,330.71 in unreconciled

⁴ Treaty with the Quapaw, May 13, 1833, 7 Stat. 424 at art. 3 (Ex. 1).

⁵ Yates Dep. 154:11–18 (Dec. 4, 2014) (Ex. 6).

⁶ *Id.* at 137:20–138:1.

⁷ Arthur Andersen Report, Attachment A-3 at 9 (Ex. 2).

⁸ Quapaw Analysis at 101–02 (Doc. 14).

transactions from Tribal trust accounts.⁹

Procedural Background

On July 9, 2014, the Tribe served the Government with the Tribe's First Set of Requests for Admission. Request for Admission No. 16 asked the Government to admit that the Quapaw Analysis accurately determined that approximately \$75,000 was owed to the Tribe as the result of the Government's failure (dating back to 1932) to provide the \$1,000 annual educational payment as provided by the Treaty of 1833:

The Quapaw Analysis accurately determined that at least \$75,000, not including interest, is owed to the Quapaw Tribe under the Treaty of 1833, which provides that the Quapaw Tribe is to receive \$1,000 annually for education purposes. The Government has not made these treaty-required payments since 1932.¹⁰

In response, the Government admitted that "line-item budget appropriations for Quapaw educational annuity payments have not been included in the Department of the Interior's budget since 1932. . . ." ¹¹

The Tribe's First Set of Requests for Admission also included Request for Admission Number 18, asking the Government to admit that "[t]he Quapaw Analysis accurately concluded that at least \$32,584, not including interest, is owed to the Quapaw Tribe as set forth in the Arthur Andersen Tribal Reconciliation Project."¹² In response, the Government stated that it "admits that the Quapaw Analysis summarized allegedly unreconciled disbursement transactions and proposed adjustments set forth in the Agreed-

⁹ Quapaw Analysis at 101-02 (Doc. 14).

¹⁰ Pls./Claimants' Request for Admission No. 16 (Ex. 3).

¹¹ Def.'s Response to Pls./Claimants' Request for Admission No. 16 (Ex. 4).

¹² Pls./Claimants' Request for Admission No. 18 (Ex. 3).

Upon Procedures and Findings Report issued for the Quapaw Tribe.”¹³ And when the Government’s Rule 30(b)(6) witness was deposed on this issue, he admitted that these transactions are “lacking certain approval documents.”¹⁴

Finally, the Tribe’s First Set of Requests for Admission included Request for Admission Number 15, asking the Government to admit that “[t]he Quapaw Analysis accurately determined that at least \$70,331, not including interest, is owed to the Quapaw Tribe but was never deposited or posted to the Quapaw Tribal account”¹⁵ In response, the Government stated that it had no information regarding those transactions.¹⁶

Standard of Review

Summary judgment under RCFC 56 is proper where the evidence demonstrates that “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”¹⁷ The court may decide issues of law and of statutory interpretation on summary judgment.¹⁸ “[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment”¹⁹ To create a dispute over an issue of material fact, “the party opposing the motion must point to an evidentiary conflict created on the record at least by a counter statement of a fact or facts set forth in detail in an affidavit by a knowledgeable

¹³ Def.’s Response to Pls./Claimants’ Request for Admission No. 18 (Ex. 4).

¹⁴ Chavarria Dep. 190:18–19 (Ex. 5).

¹⁵ Pls./Claimants’ Request for Admission No. 15 (Ex. 3).

¹⁶ Def.’s Response to Pls./Claimants’ Request for Admission No. 15 (Ex. 4).

¹⁷ *Long Island Sav. Bank, FSB v. United States*, 503 F.3d 1234, 1243 (Fed. Cir. 2007).

¹⁸ *Santa Fe Pac. R.R. Co. v. United States*, 294 F.3d 1336, 1340 (Fed. Cir. 2002).

¹⁹ *Scott v. Harris*, 550 U.S. 372, 380 (2007) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986)).

affiant. Mere denials or conclusory statements are insufficient.”²⁰ But “[e]ven when material facts are in dispute, . . . summary adjudication may be appropriate if, with all factual inferences drawn in favor of the nonmovant, the movant would nonetheless be entitled to judgment as a matter of law.”²¹ For, “[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.”²²

Argument

I. The Government is liable for breach of its obligation under the 1833 Treaty to pay the Quapaw Tribe \$1,000 annually for educational purposes

In the 1833 Treaty the United States promised to appropriate for the Quapaw Tribe \$1,000 annually for education purposes. But since 1932 the Department of the Interior has failed to request, and the Government has failed to make this appropriation. For breaching this treaty obligation, the United States is liable as a fiduciary and, there being no issue of material fact, the Tribe is entitled to recover the unpaid amounts plus investment returns on this sum.

A. The 1833 Treaty obligates the United States to appropriate \$1,000 annually for tribal educational purposes

In Article III of the 1833 Treaty between the United States and the Quapaw Tribe, the Government promised to pay the Tribe \$1,000 per year for educational purposes:

The United States also agree to appropriate one thousand dollars per year

²⁰ *Barmag Barmer Maschinenfabrik AG v. Murata Machinery, Ltd.*, 731 F.2d 831, 835–836 (Fed. Cir. 1984).

²¹ *Young Dental Mfg. Co. v. Q3 Special Prods.*, 112 F.3d 1137, 1141 (Fed. Cir. 1997), *reh’g denied* June 19, 1997.

²² *Scott*, 550 U.S. at 380 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–587 (1986)).

for education purposes to be expended under the direction of the President of the United States; . . . the above appropriation for education purposes to be continued only as long as the President of the United States deems necessary for the best interests of the Indians.²³

B. The United States has not made any \$1,000 annual payments to the Tribe since 1932

But since 1932 the Government has not honored its treaty obligation. In 1932 Victor Griffin, Chief of the Quapaw, inquired of the Superintendent of the Quapaw Indian Agency why “in recent years \$1,000 for educational purposes has been discontinued.”²⁴ The Superintendent forwarded the request to the Commissioner of Indian Affairs:

I have been requested by Victor Griffin, Chief of the Quapaw Indians, to ascertain from the Department why the provisions of Article 3, Treaty of May 13, 18[3]3, . . . in recent years \$1,000.00 for educational purposes has been discontinued.²⁵

The next year, 1933, Indian Commissioner G.E.E. Lindquist reported to the Secretary of the Interior that the \$1,000 annual education treaty payment to the Quapaw had disappeared:

There is also a treaty provision to the effect that \$1,000 be appropriated annually for school purposes in behalf of the Quapaws. Recently this appropriation has disappeared; at least it does not appear in the budget distribution. The Quapaws, who formerly had a few children enrolled at the Seneca School, are inclined to feel that some discrimination is practiced against them since the disappearance of the \$1,000 from the budget.²⁶

²³ Treaty with the Quapaw (Ex. 1).

²⁴ Letter from H.A. Andrews, Superintendent, Quapaw Indian Agency, to the Hon. Comm’r of Indian Affairs (Nov. 16, 1932) (Ex. 2).

²⁵ *Id.*

²⁶ Letter from G.E.E. Lindquist, Member, Board of Indian Comm’rs, to Hon. Samuel A. Eliot, Chairman, Bd. of Indian Comm’rs, “Report on the Quapaw Indian Agency, Oklahoma,” at 5–6 (Jan. 31, 1933) (Ex. 3).

C. The Quapaw Analysis confirms that the United States has not made this Treaty payment, and the Government admits that it has no records showing that any post-1932 payments have been made

The Quapaw Analysis team likewise found no record that any such annual educational treaty payments had been made from 1932 to the present:

[T]he Treaty of 1833 provided for \$1,000 per year to be allocated to the Tribe for educational purposes. From 1932 onward no record can be found of this payment being received, nor is there any record stating that the President no longer deemed this appropriation necessary. Since no records have been produced to the contrary, the Project Team concludes the Tribe was, and still is, due this amount annually.²⁷

In response to the Tribe's Request for Admission Number 16 the Government has admitted that "line-item budget appropriations for Quapaw educational annuity payments have not been included in the Department of the Interior's budget since 1932,"²⁸ in direct violation of its treaty obligations.

The Government also admits that the Tribe has taken no action to relinquish its right to this treaty payment,²⁹ and the designated representative of the United States testified under RCFC 30(b)(6)³⁰ that the President has never deemed this payment unnecessary for the Quapaw Indians:

- Q. To your knowledge, has the [P]resident ever deemed it necessary that the [educational] payment not continue?
A. I'm not aware of any fact of that nature.³¹

In addition, the Government's Rule 30(b)(6) representative on this issue admitted

²⁷ Quapaw Analysis at 103 (Doc. 14).

²⁸ Def.'s Response to Pls./Claimants' Request for Admission No. 16 (Ex. 4).

²⁹ Yates Dep. 146:10-17 (Ex. 6).

³⁰ *Id.* at 131:3-135:18 (discussing Yates's role as a representative of the United States).

³¹ *Id.* at 137:20-138:1.

that the United States has no record of any payments ever made under the 1833 Treaty:

Q. To your knowledge, does the United States have any record of any payment ever made under the 1833 treaty?

A. I'm not aware of any record.³²

D. The Government is liable for breach of its treaty obligation

The Supreme Court has held that the Government's failure to live up to its treaty obligations is the breach of a fiduciary obligation of the highest order:

In carrying out its treaty obligations with the Indian tribes the Government is something more than a mere contracting party. Under a humane and self[-]imposed policy which has found expression in many acts of Congress and numerous decisions of this Court, it has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by the most exacting fiduciary standards.³³

By the May 13, 1833 Treaty the Quapaw Tribe relinquished its land claims and agreed to move from its homeland along the Arkansas River to a new reservation in present-day Oklahoma and Kansas in return for various promises, including an annual appropriation of \$1,000 for education purposes.³⁴ In making this promise, the United States declared:

[I]t is the policy of the United States in all their intercourse with the Indians to treat them liberally as well as justly, and to endeavour to promote their civilization and prosperity; it is further agreed that in consideration of the important and extensive cessions of lands made by the Quapaws to the United States and in view of their present impoverished and wretched condition, they shall be removed to their new homes at the expense of the United States.³⁵

³² Yates Dep.147:5–16 (Ex. 6); *see also id.* at 152–54 (also indicating that the United States has not found any records of educational payments made under the 1833 Treaty).

³³ *Seminole Nation v. United States*, 316 U.S. 286, 296–97 (1942) (footnote omitted).

³⁴ Treaty with the Quapaw (Ex. 1).

³⁵ *Id.* at art. 3.

The Quapaw have kept their end of the bargain, transplanting themselves and making that reservation in Oklahoma their homeland. The United States, however, has not kept its word—has not made the \$1,000-per-year education appropriation since 1932, breaching the 1833 Treaty. For this the Government is liable in damages of \$1,000 per year from 1932 through 2015 (\$83,000) together with the investment income the funds would have earned had they been timely deposited.

II. The Government is liable for unauthorized disbursements from the Quapaw Tribe’s trust account totaling \$31,680.80 as determined by the Government’s Tribal Trust Funds Reconciliation Project (Arthur Andersen) Report

The congressionally mandated Tribal Trust Funds Reconciliation Project, which culminated in a 1995 report by Arthur Andersen LLP, identified three disbursements from the Quapaw Tribe’s trust accounts, totaling \$31,680.80, that were not authorized.³⁶ The Quapaw Analysis confirmed this total, and also calculated that, had those funds been kept in the trust account, they would have accumulated \$903.00 in statutorily-required interest as of September 30, 1992. The Quapaw Tribe is therefore due \$31,680.80, plus the investment income that would have been earned on these sums had they not been improperly disbursed.

A. The Arthur Andersen Report identified \$31,680.80 in unauthorized disbursements from the Tribe’s trust accounts

In the early 1990s, under a congressional mandate, the United States Bureau of Indian Affairs hired the accounting firm Arthur Andersen LLP “to reconstruct historical transactions, to the extent practicable, for all years for which records are available for all

³⁶ Arthur Andersen Report, Attachment A-3 at 9 (Ex. 2).

Tribal Trust accounts managed by the Bureau.”³⁷ This project was the Tribal Trust Funds Reconciliation Project and resulted in a report from Arthur Andersen dated December 31, 1995. The report covered transactions between July 1, 1972 and September 30, 1992: “The Andersen report was required by Congress in an effort to correct longstanding problems in accounting for tribal trust funds by BIA. The report took five years to research and draft, and cost the United States \$21 million to complete.”³⁸

While the Report “did not even include a full reconciliation of known transactions, which was impossible due to the absence of records,”³⁹ the United States presented the Report as “the best that could be done.”⁴⁰ As part of the Reconciliation Project, Arthur Andersen:

[V]erified (i.e., traced and agreed) non-investment disbursements posted to each of the Tribe’s accounts, to the extent source documentation was provided, as to amount, date and account number We also verified (i.e. traced and agreed), to the extent source documentation was provided, the posted disbursement transactions as to amount, date and account number to the requests for withdrawal from the Tribe and/or the Bureau⁴¹

The 1995 Arthur Andersen report identified three disbursements totaling \$31,680.80 for which, according to Arthur Andersen, “[t]he disbursement was to the Tribe in care of Superintendent or third party (Bank) and did not have both Tribal and other governmental signed authorization.”⁴² These disbursements were not authorized

³⁷ Arthur Andersen Report at 1 (Ex. 2).

³⁸ *Osage Tribe of Indians of Okla. v. United States*, 93 Fed. Cl. 1, 26 (2010).

³⁹ *Id.* at 35.

⁴⁰ *Osage Tribe of Indians of Okla. v. United States*, 96 Fed. Cl. 390, 449 (2010).

⁴¹ Arthur Andersen Report at 2 (Ex. 2).

⁴² *Id.*, Attachment A-3 at 9 (Ex. 2).

withdrawals from the Tribe's trust accounts. As the Government's 30(b)(6) witness on this topic testified these transactions are "lacking certain approval documents."⁴³

B. An independent accountant, hired as part of the Quapaw Analysis, confirmed the \$31,680.80 in unauthorized disbursements and calculated statutory interest of \$903.00 as of 1992

As part of the Quapaw Analysis, Quapaw Information Systems, Inc. contracted with an independent accountant, Gerding, Korte & Chitwood, P.C. to review the Arthur Andersen report and identify "[d]isbursements that did not have both Tribal and governmental authorization" and "[i]nterest adjustments or variances."⁴⁴ Gerding, Korte & Chitwood confirmed that \$31,680.80 in disbursements were made without proper authorization.⁴⁵ In addition, Gerding, Korte & Chitwood (using the Arthur Andersen Report's historical treatment of cash balance interest allocations) calculated that interest as of September 30, 1992 on those unauthorized disbursements was \$903.00.⁴⁶

C. This Court has held that the United States is bound by the conclusions reached in the Arthur Andersen report

This Court has previously dealt with Tribal Trust Reconciliation Project reports, relying on them in other Indian breach-of-trust cases. In *Osage Tribe of Indians v.*

⁴³ Chavarria Dep. 190:18–19 (Ex. 5).

⁴⁴ Gerding, Korte & Chitwood, P.C., Independent Accounts' Report on Applying Agreed-Upon Procedures (Jan. 5, 2010) (Quapaw Analysis at 158–64 (app'x 3) (Doc. 14)).

⁴⁵ Gerding, Korte & Chitwood Report at Schedule GKC-2 (Quapaw Analysis at 164 (app'x 3) (Doc. 14)).

⁴⁶ Gerding, Korte & Chitwood Report at Schedule GKC-2 (Quapaw Analysis at app'x 3 (Doc. 14)). The interest calculated represents a simple interest at statutory rates through December 31, 1984, and daily compound interest based on applicable Treasury posted rates as of January 1, 1985. *See id.*; *see also* Arthur Andersen Report, Attachment B-2 at 19–22 ("Summary of Treasury Interest Recalculation Procedures") (Ex. 2); 25 U.S.C. § 161a (1930) (as amended, Oct. 4, 1984) ("Tribal funds in trust in Treasury Department; rate of interest").

United States,⁴⁷ this Court determined that, absent an actual accounting of trust revenues, the Tribal Reconciliation Report serves as a “reasonable estimate” of what a full accounting would show:

[T]he parties must rely on the data generated for the Arthur Andersen Trust Fund Reconciliation Project (TRP) report . . . prepared by the contractor for the United States as a “‘reasonable estimate’ . . . of the data the Osage Tribe would have obtained had data been available from [Bureau of Indian Affairs] BIA records.”⁴⁸

Nor may the Government dispute the methodology of the Tribal Reconciliation Reports because “[i]n the past, [the Government] offered plaintiff the Andersen Report as a ‘reasonable estimate’ of the trust accounts in the absence of proper accounting.”

Accordingly, the Government

as trustee in breach, is not entitled to employ its vast resources to cherry pick data that is entirely favorable to the government. Although defendant had previously imposed “time and cost” constraints upon Arthur Andersen’s TRP, defendant has now authorized Mr. Chavarria to undertake “at least some of this time-consuming analysis” “given the claims raised in this litigation.” It appears now, as it appeared to the court in *Osage IV*,

that while plaintiff has repeatedly pressed the government for a more complete accounting of the tribal trust records for the Osage and other tribes, the government has refused on the grounds that such exercises would not be cost-effective. However, now that performing a more thorough analysis of the data may financially benefit the government, it has picked a few of the gaps in the investment analysis where it thinks it can gain ground, and revised those based on a small selection of documents that Arthur Andersen was told not to analyze when preparing the Andersen Report.⁴⁹

⁴⁷ *Osage Tribe*, 93 Fed. Cl. 1 (2010).

⁴⁸ *Id.* at 26 (quoting *Osage Tribe of Indians of Okla. v. United States*, 72 Fed. Cl. 629, 669–70 (2006)).

⁴⁹ *Osage Tribe*, 96 Fed. Cl. at 450 (quoting *Osage Tribe*, 93 Fed. Cl. at 34) (internal quotations, alterations, and citations omitted).

As the Federal Circuit held in *Confederated Tribes of Warm Springs Reservation of Oregon v. United States*,⁵⁰ “improper accounting procedures followed by the BIA” are the responsibility of the United States, not the Tribes.⁵¹ The United States cannot now walk away from its own “prior, objective report”⁵² nor can it rely upon records not produced to Arthur Andersen—or to plaintiffs in this litigation—to attempt to impeach its own report.⁵³ Therefore, as in *Osage Tribe*, the Quapaw Tribe may rely on the Andersen Report and the Quapaw Analysis’s review of the Andersen Report.⁵⁴

D. The Government does not dispute that it has no records showing the Tribe authorized these distributions

At his 30(b)(6) deposition on behalf of the United States, Greg Chavarria admitted that the United States does not have documentation to support these unauthorized disbursements.

[30(b)(6)] WITNESS: Those disbursement transactions are disclosed in the Anders[e]n report. They are reconciled, but they are lacking certain approval documents that if located, I would assume, would be considered as to whether or not there in fact are damages.

Q. Okay. But, to date, you have not found any such documents for the Quapaw tribe, correct, related to this [\$]32,000?

A. Not to date.⁵⁵

Because to date the United States has published two reports—the Arthur Andersen

⁵⁰ *Confederated Tribes of Warm Springs Reservation of Ore. v. United States*, 248 F.3d 1365 (Fed. Cir. 2001).

⁵¹ *Id.* at 1375.

⁵² *Osage Tribe*, 96 Fed. Cl. at 451.

⁵³ *Id.*

⁵⁴ *See id.* at 456 (“The court, guided by *Warm Springs*, holds that plaintiff has met its burden of proving . . . that its reliance on the Andersen Report’s statements of interest to estimate a portion of its damages is reasonable.”).

⁵⁵ Chavarria Dep. 190:16–191:4 (Ex. 5).

report and the Quapaw Analysis—containing the views of two independent auditors identifying these three disbursements totaling \$31,680.80 as unauthorized. The Tribe is entitled to summary judgment that the Government must reimburse the Quapaw Tribe for these erroneous disbursements of tribal trust account funds, together with the investment income they would have earned.

III. The Quapaw Tribe is owed \$70,330.71 for transactions that were not credited to the Tribe’s trust accounts, as set forth in the Quapaw Analysis

In addition to confirming the Arthur Andersen analysis, the QIS team also reviewed records of Tribal trust accounts between 1939 and 2006, and ultimately identified an additional \$70,330.71 in unauthorized transactions:

The Project Team reviewed records pertaining to the Tribal trust accounts before, during, and after the time span of the Arthur Andersen Tribal Reconciliation Project (the “TRP”). The Arthur Andersen TRP itself did not provide supporting documents, and the gaps outlined in the DCP have not been filled in as requested. Specifically, Statement of Account documents have not been made available, deposit tickets are sparse, and the income due and/or received from surface leases cannot be verified (as posted) to the Quapaw Tribal Account. Nevertheless, the Project Team developed a spreadsheet based on transactional data from the resources available. This spreadsheet identifies transactions posted to the Tribal Trust Accounts and transactions in which monies should have been received, or were received, but that cannot be verified (as posted) to the Tribal Trust Accounts. The interest account (14X7980) is listed separately from the Q-32 and 14X7480 accounts.

The spreadsheet begins in 1939 with entries found on IIM ledger cards for the Quapaw Tribe’s account. The total dollar amounts unaccounted for before interest accrual are \$70,331.⁵⁶

The Government does not provide any evidence or documents to dispute the Quapaw Analysis team’s conclusion that the Government failed to credit the Tribe’s

⁵⁶ Quapaw Analysis at 101–02 (Doc. 14).

account with \$70,330.71 (plus investment returns). In discovery the Government has simply stated that it has no information regarding these transactions:

[TRIBE’S] REQUEST FOR ADMISSION NO. 15

The Quapaw Analysis accurately determined that at least \$70,331, not including interest, is owed to the Quapaw Tribe but was never deposited or posted to the Quapaw Tribal account Q-32/7480.

[GOVERNMENT’S] RESPONSE TO REQUEST FOR ADMISSION NO. 15

Expert discovery is not complete. The United State[s]’s litigation consultants and experts have not fully analyzed the Quapaw Analysis. Thus, the United States lacks information at this time to admit or deny the substance of the allegation.⁵⁷

Because the Government has come forward with no evidence to challenge the Tribe’s claim that, as the Quapaw Analysis concludes, the Government failed to credit the Tribe’s account with a net \$70,330.71, the Tribe is entitled to summary judgment for that amount, together with the investment income that would have been earned on this sum had it been timely credited to the Tribe’s account.

Conclusion

For these reasons the Court should grant the Tribe’s motion for partial summary judgment on these three claims.

Respectfully submitted,

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⁵⁷ Def.’s Response to Pls./Claimants’ Request for Admission No. 15 (Ex. 4).

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April 3, 2015

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